



Oregon

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To: Energy Facility Siting Council

From: Chase McVeigh-Walker, Senior Siting Analyst

Date: April 5, 2024

Subject: Agenda Item F (Information Item):
Leaning Juniper IIA Request for Amendment 3, Review of the Draft Proposed Order for the April 19, 2024, EFSC Meeting

Attachments: 1. Draft Proposed Order
2. Public Comments

STAFF RECOMMENDATION

The Oregon Department of Energy (Department) recommends the Energy Facility Siting Council (EFSC or Council) approve the requested site certificate amendment and grant issuance of a third amended site certificate, subject to compliance with existing, recommended amended, and recommended new site certificate conditions.

BACKGROUND AND FACILITY OVERVIEW

On September 21, 2007, the Council issued the Site Certificate for the Leaning Juniper IIA Wind Power Facility, authorizing the construction and operation of a 279 MW wind power generation facility with up to 133 turbines, within an 8,565 acre site boundary. The facility was designed to be divided into two sections, “Leaning Juniper II North” (93 MW) and “Leaning Juniper II South” (186 MW). Since its initial approval, Council authorized two Site Certificate amendments, on November 20, 2009 and June 28, 2013.

The Final Order on Request for Amendment 1 authorized the construction and operation of up to 84 wind turbines (186 MW) and related or supporting facilities within 7,962 acres of new site boundary area, referred to as “Leaning Juniper IIB”. The previously approved facility components and site boundary became/were referred to as Leaning Juniper IIA.

The Final Order on Request for Amendment 2 authorized the division of the Leaning Juniper II Facility into two separate site certificates, the Leaning Juniper IIA Wind Power Facility and the Leaning Juniper IIB Wind Power Facility.

PROPOSED FACILITY MODIFICATIONS

On February 14, 2024, Leaning Juniper Wind Power II, LLC (certificate holder), filed Request for Amendment 3 of the Site Certificate for the Leaning Juniper IIA Wind Power Facility (RFA3). In RFA3, the certificate holder seeks authorization to:

- Repower 36 wind turbines (replacement of rotors, nacelles and generator; and foundation reinforcement); increase blade tip height from 404 to 453 feet.
- Temporarily disturb approximately 396.2 acres (roads, collector line, turbine pad, laydown and crane assembly areas) within a proposed micrositing corridor (herein referred to as “RFA3 repower corridor”)
- Install a new underground, 34.5 kilovolt (kV) collector line system
- Decommission two wind turbines
- New conditions (see RFA3 Attachment 1 Section VII)

STAFF EVALUATION OF REQUEST AND SUMMARY OF DRAFT PROPOSED ORDER

In accordance with OAR 345-027-0365, the Department reviewed RFA3 and issued the DPO, and the Public Notice of the DPO on February 29, 2024. As presented in the DPO, the Department recommends that Council find that, subject to existing and recommended conditions of approval, the preponderance of evidence on the record supports the conclusion that the facility, with the changes proposed in RFA3, would comply with the Council’s general standards in OAR chapter 345, division 022, and with other applicable provisions of OAR chapter 345 and ORS chapter 469.

In the DPO, the Department recommends that the changes proposed in RFA3 would not necessitate new or amended site certificate conditions, and that to the extent applicable, previously imposed conditions would continue to minimize potential impacts under the following applicable standards/requirements:

- Structural Standard (DPO pg. 21-28)
- Land Use (DPO pg. 33-42)
- Protected Areas (DPO pg. 42-52)
- Scenic Resources (DPO pg. 70-76)
- Recreation (DPO pg. 82-86)
- Public Health and Safety Standards for Wind Energy Facilities (DPO pg. 101-103)
- Cumulative Effects Standard for Wind Energy Facilities (DPO pg. 103-105)
- Noise Control Regulations (DPO pg. 105-110)
- Water Rights (DPO pg. 114)

The DPO further recommends Council impose new or amended conditions for the following standards:

General Standard of Review

- Condition 27 - continue to require that the facility be designed and operate consistently with the dimensions currently under review but relieve the automatic amendment in the future if there were to be minor dimensional changes during final engineering (DPO pg. 15)

- Condition 117 - establish a repower commencement deadline within 2 years of execution of the amended site certificate, and a completion deadline three years following date commencement. (DPO pg. 16)

Organizational Expertise

- Condition 21 - require the certificate holder to submit progress reports on the status of compliance with the conditions applicable to the repower every 3-months, rather than every 6-months, to afford the Department the ability to more closely track compliance status (DPO pg. 18-19)
- Condition 106 - require the certificate holder to identify and obtain all necessary third-party permits in advance of the facility repower, as applicable to the action necessitating the permit. (DPO pg. 21)

Soil Protection

- Condition 106 - require the certificate holder, prior to repower disturbance, to obtain a National Pollutant Discharges Elimination System Construction Stormwater General Permit 1200-C (DPO pg. 32)
- Condition 120 - require the certificate holder, during facility repower, adhere to the requirements of a 1200-C/Erosion and Sediment Control Plan. (DPO pg. 32)
- Condition 107 - require the certificate holder to adhere to the requirements of the Soil Monitoring Plan prior to the facility repower. (DPO pg. 32)
- Condition 121 - require the certificate holder to adhere to the requirements of the Soil Monitoring Plan during the facility repower. (DPO pg. 32)

Retirement and Financial Assurance

- Condition 108 - require the certificate holder to submit to the Department a bond or letter of credit that address the decommissioning amount for the repowered facility. (DPO pg. 57- 58)
- Condition 122 - require the certificate holder to describe the status of the bond or letter of credit in the semi-annual report submitted to the Council under Condition 21(a). Additionally, Condition 122 clarifies that the Department and Council reserve the right to adjust the contingencies, as appropriate and necessary to ensure that costs to restore the site are adequate to maintain health and safety of the public and environment. (DPO pg. 58)
- Condition 30 - delineate the applicability of condition requirements based on phase of repower (preconstruction, construction, operation). (DPO pg. 58-59)

Fish and Wildlife Habitat

- Condition 109 - require the certificate holder to finalize the Repower Revegetation and Noxious Weed Control Plan, subject to approval by the Department in consultation with ODFW. (DPO pg. 66)
- Condition 123 - require that the Repower Revegetation and Noxious Weed Control Plan be implemented and adhered to during construction and the facility operational lifetime. (DPO pg. 66)

- Condition 110 - require the certificate holder to finalize the Repower Habitat Mitigation Plan subject to approval by the Department in consultation with ODFW. (DPO pg. 67-68)
- Condition 124 - require the certificate holder to adhere to and implement the Repower Habitat Mitigation Plan during construction and the facility operational lifetime. (DPO pg. 68)

Threatened and Endangered Species

- Condition 111 - require the certificate holder to perform Washington Ground Squirrel surveys (WGS) (non-protocol, spot check) and update maps and flagging in areas of ground disturbance within 1,000-feet of previously identified WGS colonies, prior to the facility repower. (DPO pg. 70)
- Condition 125 - require the certificate holder to install flagging/temporary fencing extending 150-feet from any WGS colonies identified during the pre-repower WGS spot check. (DPO pg. 70)

Historic, Cultural, and Archaeological Resources

- Condition 112 - require the certificate holder to install flagging extending 100-feet from the site boundaries of recorded sites 35GM373 and 35GM388, prior to disturbance within 200-feet of the recorded sites. (DPO pg. 81)
- Condition 126 - require the certificate holder to prohibit ground disturbance within 100-feet from the site boundaries of 35GM373 and 35GM388 during the facility repower. (DPO pg. 81)
- Condition 113 - require the certificate holder to review/update the contact information presented in Section 2.1.2 (No. 4) of the Inadvertent Discovery Plan (IDP), prior to the facility repower. (DPO pg. 81)
- Condition 118 - require the certificate holder and any onsite contractors, to adhere to the requirements of the Inadvertent Discovery Plan. (DPO pg. 81)

Public Services

- Condition 114 - require the certificate holder to notify local police services of the schedule and expected number of temporary workers and traffic volume to result from repower activities, prior to facility repower. (DPO pg. 89)
- Condition 115 - require the certificate holder to execute a Road Use Agreement with the Gilliam County Public Works Department, prior to facility repower. (DPO pg. 89)
- Condition 119 - require the certificate holder to adhere to the terms and conditions of the Road Use Agreement, during and post facility repower. (DPO pg. 89)

Wildfire Prevention and Risk Mitigation

- Condition 115 - require the certificate holder to submit a Final Repower Wildfire Mitigation Plan (WMP) to the Department for review and approval, prior to facility repower. (DPO pg. 95)
- Condition 119 - require the certificate holder to require onsite contractors and employees to adhere to the Repower WMP (updated as needed), during the facility repower. (DPO pg. 95)

- Condition 129 - require the certificate holder to adhere to the requirements of the WMP, report annually to the Department on the status of updates to BMPs and technologies. (DPO pg. 98)

Waste Minimization

- Condition 130 - require the certificate holder to submit copies of any agreements or contracts with contractors who will manage the recycling or reuse of wind turbine components. If there is no feasible recycling or reuse options for the wind turbines, then the condition requires the certificate holder to explain the reasons why it is not available and document the process and final disposal of the components. (DPO pg. 100)

Removal Fill

- Condition 128 - require the certificate holder to flag and avoid via 50-meter buffer impacts to Wetlands 1 and 2, and Streams 1 and 2, unless DSL concurrence is obtained and determines that Streams 1 and 2 are not jurisdictional (DPO pg. 113)

PUBLIC COMMENTS

The Public Notice of the DPO initiated a public comment period on RFA3 and the DPO. Oral comments were accepted at a public hearing held in Hermiston Oregon on March 21. EFSC Vice-Chair, Cindy Condon, was the presiding officer for the Public Hearing. The Public Hearing was held at the Oxford Suites (Oxford Room) located in Hermiston, Oregon. The complete video/audio file available online at:

<https://www.youtube.com/playlist?list=PLIsoA8uJZ78dsM5XXaBjvYaaQyyKXXGZf>

A summary of issues raised in the written and oral comments is provided below.

Commenter	Comment Subject	Comment Summary	DPO Applicability (Section Reference)	Department's Proposed Order Recommendations and Responses
<i>Reviewing Agencies Comments</i>				
Oregon Department of Aviation (ODAv)	Review of facility structures for potential impacts to navigable airspace	Submittal of notice of construction and new aeronautical studies for new structures or changes to location and increases of height	III.M. Public Services; Air Traffic Safety (pg. 89)	Based on ODAv determinations submitted as Attachment 19 of RFA3 that conclude that the repowered turbines would not be a hazard, the Department does not recommend that any other changes to the DPO are necessary.
<i>Public Comments</i>				
Oregon-California Trails Association (OCTA)	Interest in historic trails, including but not limited to the Oregon National Historic Trail.	"No comments on the current documentation since [RFA3] indicates that the Oregon National Historic Trail is not directly impacted by the project."	III.L. Recreation; Oregon National Historic Trail Segment (pg. 83)	The Department does not recommend any changes to the DPO are necessary.
<i>EFSC Member Comments</i>				
M. Grail	Clarification question to Certificate Holder	Asked the certificate holder for clarification on temporary disturbance estimates.	III.H.1.4. Habitat Mitigation and Recommended Conditions (pgs. 65-68)	n/a
A. Beier	Clarification question to Certificate	Asked the certificate holder a clarification question regarding waste minimization and Condition	III.O. Waste Minimization (pg. 100)	n/a

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	Holder	130.		
	Consistency with findings in Wildfire and Organizational Expertise Standards	Requested the Department to make sure the information provided for the Wildfire and Organizational Expertise Standards is consistent with recent Council decisions.	III.B. Organizational Expertise; III.N. Wildfire Prevention and Risk Mitigation	The Department will seek additional Council feedback to address comment during Council's review of the DPO.
K. Imes	Condition 130 and Waste Management Plan	Requested the Department review Condition 130 and provide more information and detail to support the waste management plan and its requirements	III.O. Waste Minimization (pg. 100)	<p>The Department interprets the outcome of Condition 130 to result in either contracts and agreements or a plan that includes a description of methods and vendors for the packaging, transport, and recycling of wind turbine components.</p> <p>The Department will seek additional Council feedback to address comment during Council's review of the DPO.</p>
<i>Certificate Holder Comments</i>				
Davis Wright Tremaine LLP; on behalf of the Certificate Holder	Temporary Disturbance evaluation	"The DPO proposes to impose a maximum acreage limit on temporary disturbance by facility component or activity...Certificate Holder evaluated potential temporary disturbance within repower corridors and then	II.A. Proposed RFA3 Changes; Proposed RFA3 Repower Micrositing Corridor	The maximum temporary disturbance quantities by facility component or activity provided in Table 2 of the DPO are consistent with the quantities represented in RFA3. The Department does not recommend a change to the maximum temporary disturbance

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		<p>estimated approximate disturbance areas per facility component or activity. These estimates, however, are based on preliminary designs and do not leave room for any changes that may occur prior to construction or allow flexibility out in the field. Certificate Holder requests that EFSC revise Table 2 to have it reflect "Approximate Temporary Disturbance" and then require that Certificate Holder substantially comply with approximate limits, or not exceed 10 percent of the approximated disturbance."</p>		<p>quantities, or establishing a flexible threshold that allows for an up to 10 percent increase in temporary disturbance. Allowing for flexibility in disturbance quantities of up to a 10 percent increase in what was represented in the DPO would result in impacts not previously evaluated.</p>
	<p>Financial Assurance Contingencies</p>	<p>Clarification requested in the findings (as it relates to recommended Condition 122 and amended Condition 30) to understand the frequency and discretion for ODOE to make adjustments "as appropriate and necessary" to the contingencies of the bond or letter of credit. The Certificate Holder has proposed</p>	<p>III.G. Retirement and Financial Assurance; Sit Restoration Conditions (pgs. 56-59)</p>	<p>The Department included the "appropriate and necessary" language in Conditions 122 and 30 as it relates to the protection of Public Health, Safety, and the Environment. Due to future uncertainties such as increased labor rates, equipment rental, tipping fees at a waste management facility, etc., and to reserve the rights of the Council and the Department to adjust contingencies,</p>

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		amended Condition Language for both Conditions 122 and 30.		the Department recommends that Conditions 30 and 122 be retained. However, the Department recommends the removal of "appropriate" from both conditions as it is not necessary to include to reserve the right to adjust the contingencies, and is also a subjective threshold and undefined.
	Minor Corrections	Table 3. In the Table 3 comment table ODFW's comment is captured in part by saying that the Category 2 temporary impacts will be mitigated "at a level equivalent with permanent impacts." Later, the DPO specifies the Category 2 temporary impact ratio as 1:1, not 2:1 that would apply to Category 2 permanent impacts.	III.H.1.4. Habitat Mitigation and Recommended Conditions (pgs. 65-68)	The summarized ODFW comment identifying Category 2 temporary impacts to be mitigated "at a level equivalent with permanent impacts" equates to a 2:1 temporary impact ratio. Therefore, the 1:1 ratio recommended by the Department on pg. 66 of the DPO is inconsistent with ODFW's guidance. As such, the Department recommends the Category 2 mitigation ratio referenced on pg. 66 be changed to 2:1.
	Minor Corrections	Recommended Amended Condition 27. Certificate Holder requests that Condition 27 in the DPO reflect the current language in the redline site certificate.	III.A. General Standard of Review; Mandatory and Site-Specific Conditions in Site Certificates (pgs. 14-15)	The Department recommends the language of Condition 27, as reflected in the DPO be amended to reflect the amended Condition language for Condition 27 as reflected in the draft Third Site Certificate.

Oral Comments

The Certificate Holder, as well as Council Members Grail, Beier, and Imes provided testimony during the hearing. No members of the public provided oral testimony.

Written Comments

The Public Notice on the Draft Proposed Order established March 29 as the deadline for Public Comments. The Council agreed to leave the record open until April 1 to allow the certificate holder additional an opportunity to respond to comments received. The Department received three comments (one from the certificate holder, one public comment, and one from a Reviewing Agency) before the March 29 Deadline, and the certificate holders response on April 1, 2024. Exact copies of all the written comments are provided as Attachment 2 of this staff report.

NEXT STEPS

Following the close of the record, the Council will review the DPO and any timely public comments received on the record of the hearing. No later than 30 days after the Council's review, the Department must issue a Proposed Order recommending approval, modification or denial of the request for amendment to the site certificate. The issuance of the Proposed Order will be accompanied by a public notice establishing a deadline for requests for a contested case proceeding. As stated above, only those persons who comment in person or in writing on the record of the public hearing may request a contested case proceeding on the Proposed Order for an amendment to the site certificate.

The Council may adopt, modify, or reject the Proposed Order. If the Proposed Order is adopted or adopted, with modifications, the Council will issue a Final Order granting issuance of an amended site certificate. If the Proposed Order is rejected, the Council shall issue a Final Order denying issuance of the amended site certificate. The Final Order will be subject to judicial review by the Oregon Supreme Court as provided in ORS 469.403.